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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,078	06/09/2005	Sung-Chul Choi	3449-0500PUS1	7191
2252	7590	12/24/2008		
BIRCH STEWART KOLASCH & BIRCH			EXAMINER	
PO BOX 747			REAMES, MATTHEW L.	
FALLS CHURCH, VA 22040-0747			ART UNIT	PAPER NUMBER
			2893	
NOTIFICATION DATE		DELIVERY MODE		
12/24/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/538,078	<b>Applicant(s)</b> CHOI, SUNG-CHUL
	<b>Examiner</b> Matthew Reames	<b>Art Unit</b> 2893

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 9/26/2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12,14 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,5-10,12,14,16-18 is/are rejected.
- 7) Claim(s) 2-4 and 11 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 1, 5-10, 12, 14, and 16-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Zhang (2003/0010971).
  - a. As to claim 1, 10, and 16 Zhang teaches a method and device, comprising a n-type semiconductor layer (see e.g. fig. 4 item 82); at least one insulator layer formed on the n-type semiconductor layer and provided with a plurality of holes (see e.g. item 86); quantum dots formed by filling the hole (see e.g. item 90); and a p-type semiconductor formed on the insulator layer in which the quantum dots are formed (see e.g. item 92); wherein the p-type semiconductor layer is contacted (physical) with the quantum dots, or both n-type semiconductor layer and p-type are in contact with the semiconductor layer (see e.g. fig. 4D).
  - b. As to claim 5 and 6, Zhang teaches nano-holes of about 8 nm (see e.g. abstract).
  - c. As to claim 7, Zhang teaches all the quantum dots are InGaAs quantum dots (see e.g. item 90b), with some dots having an indium concentration of zero.

- d. As to claim 8, 14, and 17 Zhang teaches the quantum dots form a surface, forming a horizontal plane, in direct contact with the p-type and the n-type layer.
- e. As to claim 9, and 12, Zhang teaches the deposition step is forming the insulator and forming the holes. Therefore the hole depth depends on the time of the etch step. Moreover applicant is reminded for the product (claim 9) that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).
- f. As to claim 18, Zhang teaches the quantum dots are directly contact the n-type layer formed underneath the dots.

***Allowable Subject Matter***

- 3. Claim 2-4 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
- 4. The following is a statement of reasons for the indication of allowable subject matter: prior art fails to teach or suggest a method or device with a second insulator formed on the first layer with a barrier layer form in between in conjunction with the other elements of claims 1 and 10.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew Reames whose telephone number is (571) 272-2408. The examiner can normally be reached on M-Th 6:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Davienne Monbleau can be reached on (571)272-1945. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MLR/

/Jack Chen/  
Primary Examiner, Art Unit 2893